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HOUSE BILL 405

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; AMENDING PROVISIONS OF THE RENEWABLE ENERGY PRODUCTION TAX CREDIT IN THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT; INCREASING THE ANNUAL AGGREGATE CAP ON CERTIFICATION OF ELIGIBLE ENERGY GENERATORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.18 NMSA 1978 (being Laws 2007, Chapter 204, Section 2) is amended to read:

"7-2-18.18. RENEWABLE ENERGY PRODUCTION TAX CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". The tax credit provided in this section may not be claimed with respect to the same electricity production for which a tax credit pursuant to Section 7-2A-19 NMSA 1978 has been claimed.

B. A taxpayer who files an individual New Mexico

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1 income tax return and who is not a dependent of another  
2 taxpayer is eligible for the renewable energy production tax  
3 credit if the taxpayer:

4 (1) holds title to a qualified energy  
5 generator that first produced electricity on or before  
6 January 1, 2018; or

7 (2) leases property upon which a qualified  
8 energy generator operates from a county or municipality under  
9 authority of an industrial revenue bond and if the qualified  
10 energy generator first produced electricity on or before  
11 January 1, 2018.

12 C. The amount of the tax credit shall equal one  
13 cent (\$.01) per kilowatt-hour of the first four hundred  
14 thousand megawatt-hours of electricity produced by the  
15 qualified energy generator in the taxable year using a wind- or  
16 biomass-derived qualified energy resource; provided that the  
17 total amount of tax credits claimed by all taxpayers for a  
18 single qualified energy generator in a taxable year using a  
19 wind- or biomass-derived qualified energy resource shall not  
20 exceed one cent (\$.01) per kilowatt-hour of the first four  
21 hundred thousand megawatt-hours of electricity produced by the  
22 qualified energy generator.

23 D. The amount of the tax credit for electricity  
24 produced by a qualified energy generator in the taxable year  
25 using a solar-light-derived or solar-heat-derived qualified

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1 energy resource shall be at the amounts specified in Paragraphs  
2 (1) through (10) of this subsection; provided that the total  
3 amount of tax credits claimed for a taxable year by all  
4 taxpayers for a single qualified energy generator using a  
5 solar-light-derived or solar-heat-derived qualified energy  
6 resource shall be limited to the first two hundred thousand  
7 megawatt-hours of electricity produced by the qualified energy  
8 generator in the taxable year:

9 (1) one and one-half cents (\$.015) per  
10 kilowatt-hour in the first taxable year in which the qualified  
11 energy generator produces electricity using a solar-light-  
12 derived or solar-heat-derived qualified energy resource;

13 (2) two cents (\$.02) per kilowatt-hour in the  
14 second taxable year in which the qualified energy generator  
15 produces electricity using a solar-light-derived or solar-heat-  
16 derived qualified energy resource;

17 (3) two and one-half cents (\$.025) per  
18 kilowatt-hour in the third taxable year in which the qualified  
19 energy generator produces electricity using a solar-light-  
20 derived or solar-heat-derived qualified energy resource;

21 (4) three cents (\$.03) per kilowatt-hour in the  
22 fourth taxable year in which the qualified energy generator  
23 produces electricity using a solar-light-derived or  
24 solar-heat-derived qualified energy resource;

25 (5) three and one-half cents (\$.035) per

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1 kilowatt-hour in the fifth taxable year in which the qualified  
2 energy generator produces electricity using a solar-light-  
3 derived or solar-heat-derived qualified energy resource;

4 (6) four cents (\$.04) per kilowatt-hour in the  
5 sixth taxable year in which the qualified energy generator  
6 produces electricity using a solar-light-derived or  
7 solar-heat-derived qualified energy resource;

8 (7) three and one-half cents (\$.035) per  
9 kilowatt-hour in the seventh taxable year in which the qualified  
10 energy generator produces electricity using a  
11 solar-light-derived or solar-heat-derived qualified energy  
12 resource;

13 (8) three cents (\$.03) per kilowatt-hour in the  
14 eighth taxable year in which the qualified energy generator  
15 produces electricity using a solar-light-derived or  
16 solar-heat-derived qualified energy resource;

17 (9) two and one-half cents (\$.025) per  
18 kilowatt-hour in the ninth taxable year in which the qualified  
19 energy generator produces electricity using a  
20 solar-light-derived or solar-heat-derived qualified energy  
21 resource; and

22 (10) two cents (\$.02) per kilowatt-hour in the  
23 tenth taxable year in which the qualified energy generator  
24 produces electricity using a solar-light-derived or  
25 solar-heat-derived qualified energy resource.

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1           E. A taxpayer eligible for a renewable energy  
2 production tax credit pursuant to Subsection B of this section  
3 shall be eligible for the renewable energy production tax credit  
4 for ten consecutive years, beginning on the date the qualified  
5 energy generator begins producing electricity.

6           F. As used in this section:

7                   (1) "biomass" means organic material that is  
8 available on a renewable or recurring basis, including:

9                           (a) forest-related materials, including  
10 mill residues, logging residues, forest thinnings, slash, brush,  
11 low-commercial-value materials or undesirable species, salt  
12 cedar and other phreatophyte or woody vegetation removed from  
13 river basins or watersheds and woody material harvested for the  
14 purpose of forest fire fuel reduction or forest health and  
15 watershed improvement;

16                           (b) agricultural-related materials,  
17 including orchard trees, vineyard, grain or crop residues,  
18 including straws and stover, aquatic plants and agricultural  
19 processed co-products and waste products, including fats, oils,  
20 greases, whey and lactose;

21                           (c) animal waste, including manure and  
22 slaughterhouse and other processing waste;

23                           (d) solid woody waste materials,  
24 including landscape or right-of-way tree trimmings, rangeland  
25 maintenance residues, waste pallets, crates and manufacturing,

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1 construction and demolition wood wastes, excluding pressure-  
2 treated, chemically treated or painted wood wastes and wood  
3 contaminated with plastic;

4 (e) crops and trees planted for the  
5 purpose of being used to produce energy;

6 (f) landfill gas, wastewater treatment  
7 gas and biosolids, including organic waste byproducts generated  
8 during the wastewater treatment process; and

9 (g) segregated municipal solid waste,  
10 excluding tires and medical and hazardous waste;

11 (2) "qualified energy generator" means a  
12 facility with at least one megawatt generating capacity located  
13 in New Mexico that produces electricity by means of a fluidized  
14 bed technology or similar low-emissions technology or a  
15 zero-emissions generation technology that has substantial  
16 long-term production potential using a qualified energy resource  
17 and that sells that electricity to an unrelated person; and

18 (3) "qualified energy resource" means [~~a~~  
19 ~~resource that generates electrical energy by means of a~~  
20 ~~fluidized bed technology or similar low-emissions technology or~~  
21 ~~a zero-emissions generation technology that has substantial~~  
22 ~~long-term production potential and that uses only the following~~  
23 ~~energy sources:~~

24 (a) ~~solar light;~~

25 (b) ~~solar heat;~~

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1 and natural resources department may estimate the annual  
2 power-generating potential of a generating facility for the  
3 purposes of this section. The energy, minerals and natural  
4 resources department shall issue a certificate to the applicant  
5 stating whether the facility is an eligible qualified energy  
6 generator and the estimated annual production potential of the  
7 generating facility, which shall be the limit of that facility's  
8 energy production eligible for the tax credit for the taxable  
9 year. The energy, minerals and natural resources department may  
10 issue rules governing the procedure for administering the  
11 provisions of this subsection and shall report annually to the  
12 appropriate interim legislative committee information that will  
13 allow the legislative committee to analyze the effectiveness of  
14 the renewable energy production tax credit, including the  
15 identity of qualified energy generators, the energy production  
16 means used, the amount of energy produced by those qualified  
17 energy generators and whether any applications could not be  
18 approved due to program limits.

19 H. A taxpayer may be allocated all or a portion of  
20 the right to claim a renewable energy production tax credit  
21 without regard to proportional ownership interest if:

22 (1) the taxpayer owns an interest in a business  
23 entity that is taxed for federal income tax purposes as a  
24 partnership;

25 (2) the business entity:

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1 (a) would qualify for the renewable  
2 energy production tax credit pursuant to Paragraph (1) or (2) of  
3 Subsection B of this section;

4 (b) owns an interest in a business entity  
5 that is also taxed for federal income tax purposes as a  
6 partnership and that would qualify for the renewable energy  
7 production tax credit pursuant to Paragraph (1) or (2) of  
8 Subsection B of this section; or

9 (c) owns, through one or more  
10 intermediate business entities that are each taxed for federal  
11 income tax purposes as a partnership, an interest in the  
12 business entity described in Subparagraph (b) of this paragraph;

13 (3) the taxpayer and all other taxpayers  
14 allocated a right to claim the renewable energy production tax  
15 credit pursuant to this subsection own collectively at least a  
16 five percent interest in a qualified energy generator;

17 (4) the business entity provides notice of the  
18 allocation and the taxpayer's interest to the energy, minerals  
19 and natural resources department on forms prescribed by that  
20 department; and

21 (5) the energy, minerals and natural resources  
22 department certifies the allocation in writing to the taxpayer.

23 I. Upon receipt of notice of an allocation of the  
24 right to claim all or a portion of the renewable energy  
25 production tax credit, the energy, minerals and natural

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1 resources department shall promptly certify the allocation in  
2 writing to the recipient of the allocation.

3 J. A husband and wife who file separate returns for  
4 a taxable year in which they could have filed a joint return may  
5 each claim only one-half of the credit that would have been  
6 allowed on a joint return.

7 K. A taxpayer may claim the renewable energy  
8 production tax credit by submitting to the taxation and revenue  
9 department the certificate issued by the energy, minerals and  
10 natural resources department, pursuant to Subsection G or H of  
11 this section, documentation showing the taxpayer's interest in  
12 the facility, documentation of the amount of electricity  
13 produced by the facility in the taxable year and any other  
14 information the taxation and revenue department may require to  
15 determine the amount of the tax credit due the taxpayer.

16 L. If the requirements of this section have been  
17 complied with, the department shall approve the renewable energy  
18 production tax credit. The credit may be deducted from a  
19 taxpayer's New Mexico income tax liability for the taxable year  
20 for which the credit is claimed. If the amount of tax credit  
21 exceeds the taxpayer's income tax liability for the taxable  
22 year:

23 (1) the excess may be carried forward for a  
24 period of five taxable years; or

25 (2) if the tax credit was issued with respect

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1 to a qualified energy generator that first produced electricity  
2 using a qualified energy resource on or after October 1, 2007,  
3 the excess shall be refunded to the taxpayer.

4 M. Once a taxpayer has been granted a renewable  
5 energy production tax credit for a given facility, that taxpayer  
6 shall be allowed to retain the facility's original date of  
7 application for tax credits for that facility until either the  
8 facility goes out of production for more than six consecutive  
9 months in a year or until the facility's ten-year eligibility  
10 has expired."

11 Section 2. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
12 Chapter 59, Section 1, as amended) is amended to read:

13 "7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
14 LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

15 A. The tax credit provided in this section may be  
16 referred to as the "renewable energy production tax credit".  
17 The tax credit provided in this section may not be claimed with  
18 respect to the same electricity production for which the  
19 renewable energy production tax credit provided in the Income  
20 Tax Act has been claimed.

21 B. A person is eligible for the renewable energy  
22 production tax credit if the person:

23 (1) holds title to a qualified energy generator  
24 that first produced electricity on or before January 1, 2018; or

25 (2) leases property upon which a qualified

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1 energy generator operates from a county or municipality under  
2 authority of an industrial revenue bond and if the qualified  
3 energy generator first produced electricity on or before January  
4 1, 2018.

5 C. The amount of the tax credit shall equal one cent  
6 (\$.01) per kilowatt-hour of the first four hundred thousand  
7 megawatt-hours of electricity produced by the qualified energy  
8 generator in the taxable year using a wind- or biomass-derived  
9 qualified energy resource; provided that the total amount of tax  
10 credits claimed by all taxpayers for a single qualified energy  
11 generator in a taxable year using a wind- or biomass-derived  
12 qualified energy resource shall not exceed one cent (\$.01) per  
13 kilowatt-hour of the first four hundred thousand megawatt-hours  
14 of electricity produced by the qualified energy generator.

15 D. The amount of the tax credit for electricity  
16 produced by a qualified energy generator in the taxable year  
17 using a solar-light-derived or solar-heat-derived qualified  
18 energy resource shall be at the amounts specified in Paragraphs  
19 (1) through (10) of this subsection; provided that the total  
20 amount of tax credits claimed for a taxable year by all  
21 taxpayers for a single qualified energy generator using a solar-  
22 light-derived or solar-heat-derived qualified energy resource  
23 shall be limited to the first two hundred thousand megawatt-  
24 hours of electricity produced by the qualified energy generator  
25 in the taxable year:

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1                   (1) one and one-half cents (\$.015) per  
2 kilowatt-hour in the first taxable year in which the qualified  
3 energy generator produces electricity using a solar-light-  
4 derived or solar-heat-derived qualified energy resource;

5                   (2) two cents (\$.02) per kilowatt-hour in the  
6 second taxable year in which the qualified energy generator  
7 produces electricity using a solar-light-derived or solar-heat-  
8 derived qualified energy resource;

9                   (3) two and one-half cents (\$.025) per  
10 kilowatt-hour in the third taxable year in which the qualified  
11 energy generator produces electricity using a solar-light-  
12 derived or solar-heat-derived qualified energy resource;

13                   (4) three cents (\$.03) per kilowatt-hour in the  
14 fourth taxable year in which the qualified energy generator  
15 produces electricity using a solar-light-derived or solar-heat-  
16 derived qualified energy resource;

17                   (5) three and one-half cents (\$.035) per  
18 kilowatt-hour in the fifth taxable year in which the qualified  
19 energy generator produces electricity using a solar-light-  
20 derived or solar-heat-derived qualified energy resource;

21                   (6) four cents (\$.04) per kilowatt-hour in the  
22 sixth taxable year in which the qualified energy generator  
23 produces electricity using a solar-light-derived or  
24 solar-heat-derived qualified energy resource;

25                   (7) three and one-half cents (\$.035) per

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1 kilowatt-hour in the seventh taxable year in which the qualified  
2 energy generator produces electricity using a solar-light-  
3 derived or solar-heat-derived qualified energy resource;

4 (8) three cents (\$.03) per kilowatt-hour in the  
5 eighth taxable year in which the qualified energy generator  
6 produces electricity using a solar-light-derived or solar-heat-  
7 derived qualified energy resource;

8 (9) two and one-half cents (\$.025) per  
9 kilowatt-hour in the ninth taxable year in which the qualified  
10 energy generator produces electricity using a solar-light-  
11 derived or solar-heat-derived qualified energy resource; and

12 (10) two cents (\$.02) per kilowatt-hour in the  
13 tenth taxable year in which the qualified energy generator  
14 produces electricity using a solar-light-derived or  
15 solar-heat-derived qualified energy resource.

16 E. A taxpayer eligible for a renewable energy  
17 production tax credit pursuant to Subsection B of this section  
18 shall be eligible for the renewable energy production tax credit  
19 for ten consecutive years, beginning on the date the qualified  
20 energy generator begins producing electricity.

21 F. As used in this section:

22 (1) "biomass" means organic material that is  
23 available on a renewable or recurring basis, including:

24 (a) forest-related materials, including  
25 mill residues, logging residues, forest thinnings, slash, brush,

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1 low-commercial value materials or undesirable species, salt  
2 cedar and other phreatophyte or woody vegetation removed from  
3 river basins or watersheds and woody material harvested for the  
4 purpose of forest fire fuel reduction or forest health and  
5 watershed improvement;

6 (b) agricultural-related materials,  
7 including orchard trees, vineyard, grain or crop residues,  
8 including straws and stover, aquatic plants and agricultural  
9 processed co-products and waste products, including fats, oils,  
10 greases, whey and lactose;

11 (c) animal waste, including manure and  
12 slaughterhouse and other processing waste;

13 (d) solid woody waste materials,  
14 including landscape or right-of-way tree trimmings, rangeland  
15 maintenance residues, waste pallets, crates and manufacturing,  
16 construction and demolition wood wastes, excluding  
17 pressure-treated, chemically treated or painted wood wastes and  
18 wood contaminated with plastic;

19 (e) crops and trees planted for the  
20 purpose of being used to produce energy;

21 (f) landfill gas, wastewater treatment  
22 gas and biosolids, including organic waste byproducts generated  
23 during the wastewater treatment process; and

24 (g) segregated municipal solid waste,  
25 excluding tires and medical and hazardous waste;

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1 (2) "qualified energy generator" means a  
2 facility with at least one megawatt generating capacity located  
3 in New Mexico that produces electricity by means of a fluidized  
4 bed technology or similar low-emissions technology or a  
5 zero-emissions generation technology that has substantial  
6 long-term production potential using a qualified energy resource  
7 and that sells that electricity to an unrelated person; and

8 (3) "qualified energy resource" means [~~a~~  
9 ~~resource that generates electrical energy by means of a~~  
10 ~~fluidized bed technology or similar low-emissions technology or~~  
11 ~~a zero-emissions generation technology that has substantial~~  
12 ~~long-term production potential and that uses only the following~~  
13 ~~energy sources:~~

14 (a) ~~solar light;~~

15 (b) ~~solar heat;~~

16 (c) ~~wind; or~~

17 (d) ~~biomass]~~ solar light, solar heat,  
18 wind or biomass that is available in sufficient quantities to  
19 supply the qualified energy generator for a minimum of ten  
20 years.

21 G. A person that holds title to a facility  
22 generating electricity from a qualified energy resource or a  
23 person that leases such a facility from a county or municipality  
24 pursuant to an industrial revenue bond may request certification  
25 of eligibility for the renewable energy production tax credit

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1 from the energy, minerals and natural resources department,  
2 which shall determine if the facility is a qualified energy  
3 generator. The energy, minerals and natural resources  
4 department may certify the eligibility of an energy generator  
5 only if the total amount of electricity that may be produced  
6 annually by all qualified energy generators that are certified  
7 pursuant to this section and pursuant to the Income Tax Act will  
8 not exceed a total of two million megawatt-hours plus an  
9 additional [~~five hundred thousand~~] one million megawatt-hours  
10 produced by qualified energy generators using a solar-light-  
11 derived or solar-heat-derived qualified energy resource plus an  
12 additional two hundred thousand megawatt-hours produced by  
13 qualified energy generators using a dairy or feedlot waste  
14 biomass-derived qualified energy resource. Applications shall  
15 be considered in the order received. The energy, minerals and  
16 natural resources department may estimate the annual  
17 power-generating potential of a generating facility for the  
18 purposes of this section. The energy, minerals and natural  
19 resources department shall issue a certificate to the applicant  
20 stating whether the facility is an eligible qualified energy  
21 generator and the estimated annual production potential of the  
22 generating facility, which shall be the limit of that facility's  
23 energy production eligible for the tax credit for the taxable  
24 year. The energy, minerals and natural resources department may  
25 issue rules governing the procedure for administering the

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1 provisions of this subsection and shall report annually to the  
2 appropriate interim legislative committee information that will  
3 allow the legislative committee to analyze the effectiveness of  
4 the renewable energy production tax credit, including the  
5 identity of qualified energy generators, the energy production  
6 means used, the amount of energy produced by those qualified  
7 energy generators and whether any applications could not be  
8 approved due to program limits.

9 H. A taxpayer may be allocated all or a portion of  
10 the right to claim a renewable energy production tax credit  
11 without regard to proportional ownership interest if:

12 (1) the taxpayer owns an interest in a business  
13 entity that is taxed for federal income tax purposes as a  
14 partnership;

15 (2) the business entity:  
16 (a) would qualify for the renewable  
17 energy production tax credit pursuant to Paragraph (1) or (2) of  
18 Subsection B of this section;

19 (b) owns an interest in a business entity  
20 that is also taxed for federal income tax purposes as a  
21 partnership and that would qualify for the renewable energy  
22 production tax credit pursuant to Paragraph (1) or (2) of  
23 Subsection B of this section; or

24 (c) owns, through one or more  
25 intermediate business entities that are each taxed for federal

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1 income tax purposes as a partnership, an interest in the  
2 business entity described in Subparagraph (b) of this paragraph;

3 (3) the taxpayer and all other taxpayers  
4 allocated a right to claim the renewable energy production tax  
5 credit pursuant to this subsection own collectively at least a  
6 five percent interest in a qualified energy generator;

7 (4) the business entity provides notice of the  
8 allocation and the taxpayer's interest to the energy, minerals  
9 and natural resources department on forms prescribed by that  
10 department; and

11 (5) the energy, minerals and natural resources  
12 department certifies the allocation in writing to the taxpayer.

13 I. Upon receipt of notice of an allocation of the  
14 right to claim all or a portion of the renewable energy  
15 production tax credit, the energy, minerals and natural  
16 resources department shall promptly certify the allocation in  
17 writing to the recipient of the allocation.

18 J. A taxpayer may claim the renewable energy  
19 production tax credit by submitting to the taxation and revenue  
20 department the certificate issued by the energy, minerals and  
21 natural resources department, pursuant to Subsection G or H of  
22 this section, documentation showing the taxpayer's interest in  
23 the facility, documentation of the amount of electricity  
24 produced by the facility in the taxable year and any other  
25 information the taxation and revenue department may require to

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1 determine the amount of the tax credit due the taxpayer.

2 K. If the requirements of this section have been  
3 complied with, the department shall approve the renewable energy  
4 production tax credit. The credit may be deducted from a  
5 taxpayer's New Mexico corporate income tax liability for the  
6 taxable year for which the credit is claimed. If the amount of  
7 tax credit exceeds the taxpayer's corporate income tax liability  
8 for the taxable year:

9 (1) the excess may be carried forward for a  
10 period of five taxable years; or

11 (2) if the tax credit was issued with respect  
12 to a qualified energy generator that first produced electricity  
13 using a qualified energy resource on or after October 1, 2007,  
14 the excess shall be refunded to the taxpayer.

15 L. Once a taxpayer has been granted a renewable  
16 energy production tax credit for a given facility, that taxpayer  
17 shall be allowed to retain the facility's original date of  
18 application for tax credits for that facility until either the  
19 facility goes out of production for more than six consecutive  
20 months in a year or until the facility's ten-year eligibility  
21 has expired."

22 Section 3. APPLICABILITY.--The provisions of this act  
23 apply to taxable years beginning on or after January 1, 2009.